

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

In re WELLS FARGO RESIDENTIAL  
MORTGAGE LENDING DISCRIMINATION  
LITIGATION

M: 08-CV-1930 MMC

**ORDER DENYING DEFENDANT'S  
MOTION TO JOIN MORTGAGE  
BROKERS AS NECESSARY PARTIES**

This Document Relates To:

ALL ACTIONS

Before the Court is defendant Wells Fargo Bank, N.A.'s ("Well Fargo") Motion to Join Mortgage Brokers as Necessary Parties, filed June 2, 2009. Plaintiffs have filed opposition, to which Wells Fargo has replied. Having read and considered the papers filed in support of and in opposition to the motion, the Court rules as follows.<sup>1</sup>

**BACKGROUND**

The instant litigation consists of four complaints, coordinated for pretrial purposes by the Judicial Panel on Multidistrict Litigation. Each complaint alleges that "Wells Fargo engaged in discriminatory residential lending practices, including the imposition of discretionary fees/charges which increased the cost of financing resulting in higher loans for minority borrowers than similarly situated non-minority borrowers." (See Transfer

<sup>1</sup>By order filed July 7, 2009, the Court deemed the matter suitable for decision on the parties' respective submissions, and vacated the hearing scheduled for July 10, 2009.

1 Order, filed April 10, 2008.)

2 As discussed below, two of the four complaints include allegations concerning fees  
3 and/or charges paid to mortgage brokers.

4 Plaintiffs Gilbert and Tracy Ventura ("Venturas") allege they "refinanced their home  
5 with a mortgage loan issued by [ ] Wells Fargo in the amount of \$175,500," and that  
6 Phoenix Home Loans ("Phoenix") "was the mortgage broker on [p]laintiffs' home  
7 refinancing." (See Compl. ¶ 37, Case No. 07-4309 MMC.) The Venturas also allege that,  
8 "[a]ccording to their HUD-I closing statement [ ], [p]laintiffs at closing were subjected to a  
9 charge described as 'Mtg Broker Comp by WFB to Phoenix Home Loans' in the amount of  
10 \$2,632.50 on a 'POC' basis (i.e., paid outside of closing) by [ ] Wells Fargo." (See Compl.  
11 ¶ 38.) The Venturas allege that the \$2,632.50 fee was a "yield spread premium" that was  
12 "assessed pursuant to [ ] Wells Fargo's credit pricing policy." (See id.) Under that policy,  
13 according to the Venturas, Wells Fargo gives mortgage brokers "discretion to impose yield  
14 spread premiums and other subjective fees," and when a borrower pays a yield spread  
15 premium, Wells Fargo "shares in additional income generated by the premium." (See  
16 Compl. ¶ 32.) The Venturas further allege that "Wells Fargo's use of yield spread  
17 premiums and other discretionary fees disproportionately and adversely affects minorities  
18 (relative to similarly situated non-minorities)." (See Compl. ¶ 35.)<sup>2</sup>

19 In their complaint, Juan and Josefina Rodriguez ("Rodriguezes") allege they  
20 "purchased a residence with a mortgage loan issued by Wells Fargo in the amount of  
21 \$620,500," and that Schaefer Financial Services ("Schaefer") "was the mortgage loan  
22 broker with respect to the loan." (See Compl. ¶ 42, Case No. 08-2154 MMC.)<sup>3</sup> The  
23 Rodriguezes also allege that "[a]ccording to their HUD-I closing statement, at the closing of  
24 the loan, [p]laintiffs were subjected to a charge described as 'Mortgage Broker  
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26 <sup>2</sup>The Venturas do not identify any "subjective fee" or "discretionary fee" they paid,  
27 other than a yield spread premium.

28 <sup>3</sup>The Rodriguezes' complaint was filed initially in the Central District of California as Civil Case No. 07-6780.

1 Compensation By WFB To: Schaefer Financial Service' in the amount of \$6,205.00 on a  
 2 'POC' basis (i.e., paid outside of closing) by Wells Fargo." (See Compl. ¶ 43.) The  
 3 Rodriguezes allege that the \$6205 fee was a "yield spread premium" that was "assessed  
 4 pursuant to Wells Fargo's credit loan pricing policy." (See id.) Under that policy, according  
 5 to the Rodriguezes, Wells Fargo gives mortgage brokers "discretion to impose yield spread  
 6 premiums and other subjective fees," and when a borrower pays a yield spread premium,  
 7 Wells Fargo "shares in additional income generated by the increased cost." (See Compl.  
 8 ¶ 37.) The Rodriguezes further allege that "Wells Fargo's use of yield spread premiums  
 9 and other discretionary fees disproportionately and adversely affects minorities." (See  
 10 Compl. ¶ 40.)<sup>4</sup>

### 11 DISCUSSION

12 By the instant motion, Wells Fargo seeks an order requiring plaintiffs to join  
 13 mortgage brokers Phoenix and Schaefer (collectively, "Brokers") as necessary parties  
 14 pursuant to Rule 19(a) of the Federal Rules of Civil Procedure.<sup>5</sup>

15 Rule 19(a)(1) provides as follows:

16 A person who is subject to service of process and whose joinder will not  
 17 deprive the court of subject-matter jurisdiction must be joined as a party if:

18 (A) in that person's absence, the court cannot accord complete  
 relief among existing parties; or

19 (B) that person claims an interest relating to the subject of the  
 20 action and is so situated that disposing of the action in the  
 person's absence may:

21 (i) as a practical matter impair or impede the  
 22 person's ability to protect the interest; or

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24 <sup>4</sup>The Rodriguezes do not identify any "subjective fee" or "discretionary fee" they paid,  
 25 other than a yield spread premium.

26 <sup>5</sup>The instant proceeding, as noted, consists of four separate complaints that have  
 27 been coordinated for pretrial purposes. Neither of the other two plaintiffs, Ruby Kathryn  
 28 Brown and Judy Williams, alleges she used the services of any mortgage broker, let alone  
 Phoenix or Schaefer. Accordingly, although defendants have captioned the instant motion  
 as a motion that "relates to all actions," the motion pertains only to the complaints filed by  
 the Venturas and the Rodriguezes.

(ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest.

See Fed. R. Civ. P. 19(a)(1).

The Ninth Circuit has interpreted Rule 19(a) as “provid[ing] that a party is ‘necessary’ in two circumstances: (1) when complete relief is not possible without the absent party’s presence, or (2) when the absent party claims a legally protected interest in the action.”

See United States v. Bowen, 172 F.3d 682, 688 (9th Cir. 1999).

With respect to the latter, i.e., the circumstance identified in Rule 19(a)(1)(B), the Ninth Circuit has held joinder is improper when the absent party has not claimed it has an interest in the action. See id. at 688-89 (holding product manufacturer not necessary party to action against defendant who repaired product, where manufacturer “never claimed that it has [ ] an interest” in the action). This requirement applies even where the existing defendant asserts it will be subjected to “conflicting obligations” if the absent party is not joined as a defendant. See Fed. R. Civ. P. 19(a)(1)(B) (requiring both claim “and” exposure to inconsistent obligations); Northrop Corp. v. McDonnell Douglas Corp., 705 F.2d 1030, 1043 (9th Cir. 1983) (holding where defendant seeks to join absent party as defendant based on contention “decree entered in [plaintiff’s] favor would allegedly expose [existing defendant] to conflicting obligations,” existing defendant is required to show “absent party claim[s] a legally protected interest relating to the subject matter of the action”). Here, as plaintiffs point out, Wells Fargo fails to show the Brokers have ever claimed an interest in the instant action. Accordingly, because “a claim of interest” by the absent party is “required,” and no such claim has been made, Wells Fargo has failed to show that either of the Brokers is a necessary party under Rule 19(a)(1)(B). See Bowen, 172 F.3d at 688-89.

The Court next considers whether the Brokers are “necessary” under the circumstance set forth in Rule 19(a)(1)(A), specifically, whether complete relief is not possible unless the Brokers are joined as defendants hereto. In this instance, the issue is whether, in the absence of the Brokers, the Court would be “preclude[d]” from “fashioning

1 meaningful relief as between the parties.” See Disabled Rights Action Committee v. Las  
2 Vegas Events, Inc., 375 F.3d 861, 879 (9th Cir. 2004).

3 In Disabled Rights Action Committee, for example, where the plaintiff sought to  
4 preclude the defendant lessees from operating a rodeo at a facility until such time as they  
5 complied with the Americans with Disabilities Act and defendant lessees argued the facility  
6 owner was a necessary party, the Ninth Circuit held the facility owner was not a necessary  
7 party because the district court could fashion “meaningful relief” in its absence. See id. at  
8 879-80. In particular, the Ninth Circuit noted that the district court could have “enjoined [the  
9 lessees] from making certain kinds of operational decisions over which they have control –  
10 e.g., enjoining them from removing accessible floor seating, or requiring the erection of  
11 temporary ramps or lifts,” or could have required the lessees “to hold the Rodeo at an  
12 accessible venue either immediately, or in the future, after the current provisions of [their]  
13 licensing agreement expire[d].” See id. at 880. In sum, the Ninth Circuit held, if a district  
14 court can grant relief against the named defendant that is “neither hollow nor meaningless,”  
15 a motion to join another party as necessary is appropriately denied. See id.

16 Here, both the Venturas and the Rodriguezes request, in their separate complaints,  
17 “extraordinary equitable and/or injunctive relief as permitted by law or equity, including  
18 rescission, restitution, reformation, attaching, impounding, or imposing a constructive trust  
19 upon, or otherwise restricting, the proceeds of [Wells Fargo’s] ill-gotten funds.” (See  
20 Compl., Case No. 07-4309, Prayer for Relief ¶ C; Compl. Case No. 08-2154, Prayer for  
21 Relief ¶ B).<sup>6</sup> Wells Fargo argues that such relief cannot be granted in the absence of the  
22 Brokers.

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25 <sup>6</sup>In addition, the Venturas and the Rodriguezes each request an award of damages,  
26 as well as costs and attorney’s fees. Wells Fargo does not argue that the Court could not,  
27 in the absence of the Brokers, issue a “meaningful” award of damages, costs, and/or  
28 attorney’s fee in favor of plaintiffs and against Wells Fargo. Indeed, as the Supreme Court  
has held, a party is not necessary, for purposes of Rule 19(a), merely because the party  
could have been found, had it been named, jointly liable. See Temple v. Synthes Corp.,  
498 U.S. 5, 7 (1990) (“It has long been the rule that it is not necessary for all joint  
tortfeasors to be named as defendants in a single lawsuit.”).

1 In support of their argument, Wells Fargo argues the Brokers should be joined as  
2 defendants for the following reason:

3 The personal financial information conveyed by [p]laintiffs to the Brokers, the  
4 loan products requested of the Brokers, whether the Brokers adhered to  
5 those requests and properly conveyed that information to Wells Fargo directly  
6 bears on the claims and defenses asserted and that might be available to the  
7 parties. For example, if Phoenix misled the Venturas and Wells Fargo as the  
Venturas aver, and/or if Phoenix and Schaefer discriminated against the  
[p]laintiffs in any regard, such information would not only support Wells  
Fargo's defenses but also potential affirmative claims by Wells Fargo against  
Phoenix and Schaefer perhaps for fraud, breach of contract and indemnity.

8 (See Def.'s Mot. at 2:6-13 (emphasis in original).)<sup>7</sup> The Court finds this argument  
9 unpersuasive. To the extent Wells Fargo is correct that conduct by the Brokers is relevant  
10 to any claim or defense of an existing party, Wells Fargo fails to explain why it is necessary  
11 that the Brokers be joined as defendants, as opposed to their officers and/or employees  
12 being called as witnesses. Moreover, whether Wells Fargo has a basis to sue the Brokers  
13 has no relevance to the instant motion, which does not seek joinder herein of the Brokers  
14 as defendants to any claim Wells Fargo may make against such entities, but rather to the  
15 claims the Venturas and Rodriguezes have alleged.

16 Wells Fargo also argues, referencing the Venturas and Rodriguezes's respective  
17 prayers for an order of attachment as to any "ill-gotten funds," that the Brokers were paid  
18 for the services rendered to plaintiffs by the use of yield spread premiums. Consequently,  
19 according to Wells Fargo, because the Brokers "shared" in the "ill-gotten" funds (see Def.'s  
20 Mot. at 9:18-20), adjudication of the issue of who received "ill-gotten funds" would be  
21 "incomplete" if the Brokers are not joined as defendants (see id. at 10:20-21). Even if a  
22 finding were to be made that the Brokers had received "ill-gotten funds," however, Wells  
23 Fargo fails to show how such finding would preclude the Court from granting "meaningful"  
24 relief to plaintiffs; Wells Fargo does not explain, for example, why an order of restitution, if  
25 otherwise appropriate, could not be limited to the portion of "ill-gotten funds" received by

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27 <sup>7</sup>As plaintiffs correctly note, the Venturas's complaint only challenges conduct by  
28 Wells Fargo. Indeed, the Venturas's complaint does not include any averment that Phoenix  
"misled" either the Venturas or Wells Fargo.

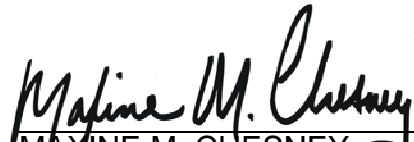
1 Wells Fargo. In sum, Wells Fargo has failed to show the Court would be precluded from  
2 "fashioning meaningful relief" if the Brokers are not joined as defendants. See Disabled  
3 Rights Action Committee, 375 F.3d at 879.

4 **CONCLUSION**

5 For the reasons stated above, Wells Fargo has not shown the Brokers are  
6 necessary parties to any complaint in the instant coordinated proceeding and, accordingly,  
7 Wells Fargo's motion to join the Brokers is hereby DENIED.

8 **IT IS SO ORDERED.**

9  
10 Dated: August 11, 2009

  
MAXINE M. CHESNEY  
United States District Judge